

**Introduced by Senator Figueroa**

December 2, 2002

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An act to amend Sections 7195 and 7197 of, and to add Sections 7196.2, 7197.5, 7197.7, and 7198.5 to, the Business and Professions Code, relating to home inspections.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 31, as introduced, Figueroa. Home inspectors.

Existing law regulates a person who performs home inspections for a fee. Existing law requires a home inspector to conduct a home inspection with the degree of care that a reasonably prudent home inspector would recognize. Under existing law, certain activities are listed as unfair business practices for a home inspector.

This bill would prohibit a person from holding himself or herself out as or using the title "certified home inspector" or other words implying he or she is a certified home inspector without fulfilling certain requirements. The bill would define a home inspection professional association and specify its duties in certifying home inspectors. The bill would require, on or after July 1, 2004, a home inspector to make disclosures in writing as to his or her qualifications, whether the home inspector carries general and professional liability insurance, and whether the home inspector is certified prior to commencing a home inspection. The bill would also add items to the list of unfair business practices for a home inspector.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



*The people of the State of California do enact as follows:*

SECTION 1. Section 7195 of the Business and Professions Code is amended to read:

7195. For purposes of this chapter, the following definitions apply:

(a) (1) “Home inspection” is a noninvasive, physical examination, performed for a fee in connection with a transfer, as defined in subdivision (e), of real property, of the mechanical, electrical, or plumbing systems or the structural and essential components of a residential dwelling of one to four units designed to identify material defects in those systems, structures and components. “Home inspection” includes any consultation regarding the property that is represented to be a home inspection or any confusingly similar term.

(2) “Home inspection,” if requested by the client, may include an inspection of energy efficiency. Energy efficiency items to be inspected may include the following:

(A) A noninvasive inspection of insulation R-values in attics, roofs, walls, floors, and ducts.

(B) The number of window glass panes and frame types.

(C) The heating and cooling equipment and water heating systems.

(D) The age and fuel type of major appliances.

(E) The exhaust and cooling fans.

(F) The type of thermostat and other systems.

(G) The general integrity and potential leakage areas of walls, window areas, doors, and duct systems.

(H) The solar control efficiency of existing windows.

(b) A “material defect” is a condition that significantly affects the value, desirability, habitability, or safety of the dwelling. Style or aesthetics shall not be considered in determining whether a system, structure, or component is defective.

(c) A “home inspection report” is a written report prepared for a fee and issued after a home inspection. The report clearly describes and identifies the inspected systems, structures, or components of the dwelling, any material defects identified, and any recommendations regarding the conditions observed or recommendations for evaluation by appropriate persons.

(d) A “home inspector” is any individual who performs a home inspection.

(e) “Transfer” is a transfer by sale, exchange, installment land sales contract, as defined in Section 2985 of the Civil Code, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of real property or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units.

(f) A “certified home inspector” means a person who meets both of the following requirements:

(1) Has demonstrated to a home inspection professional association that he or she has fulfilled one of the following:

(A) Performed at least 200 home inspections for which a fee was paid.

(B) Performed at least 100 home inspections for which a fee was paid and completed at least 45 classroom hours of relevant home inspection education provided by a school accredited by the Council for Private Postsecondary and Vocational Education, a governmental agency, a community college, or an educational provider recognized by a home inspection professional association which has been providing home inspection education to home inspectors for at least two years.

(C) Performed at least 50 home inspections for which a fee was paid and completed at least 90 classroom hours of relevant home inspection education provided by a school accredited by the Council for Private Postsecondary and Vocational Education, a governmental agency, a community college, or an educational provider recognized by a home inspection professional association which has been providing home inspection education to home inspectors for at least two years.

(2) Within the previous five years, has passed a knowledge, skills, and aptitude examination endorsed by a home inspection professional association. The examination shall test competence in home inspection practice, as determined by recognized role definition methodology, and be developed and administered in a manner consistent with the American Educational Research Association’s “Standards for Educational and Psychological Testing,” the Equal Employment Opportunity Commission’s “Uniform Guidelines for Employee Selection Procedures,” the

1 *Civil Rights Act of 1991, and the Americans with Disabilities Act*  
2 *of 1990.*

3 (g) A “home inspection professional association” means an  
4 organization that meets all of the following requirements:

5 (1) Has at least 200 members who are home inspectors in  
6 California.

7 (2) Has been in existence for at least 10 years.

8 (3) Operates pursuant to Section 501(c) of the Internal  
9 Revenue Code.

10 (4) Certifies that a home inspector has met the criteria set forth  
11 in subdivision (f) without requiring membership in the association.

12 SEC. 2. Section 7196.2 is added to the Business and  
13 Professions Code, to read:

14 7196.2. A person representing himself or herself as a home  
15 inspector shall comply with the requirements of subdivision (d) of  
16 Section 8550.

17 SEC. 3. Section 7197 of the Business and Professions Code  
18 is amended to read:

19 7197. It is an unfair business practice for a home inspector, a  
20 company that employs the inspector, or a company that is  
21 controlled by a company that also has a financial interest in a  
22 company employing a home inspector, to do any of the following:

23 (a) To perform or offer to perform, for an additional fee, any  
24 repairs to a structure on which the inspector, or the inspector’s  
25 company, has prepared a home inspection report in the past 12  
26 months. *A home protection company that is affiliated with or that*  
27 *retains a home inspector does not violate this subdivision if it*  
28 *performs repairs pursuant to a claim made under a home*  
29 *protection contract.*

30 (b) Inspect for a fee any property in which the inspector, or the  
31 inspector’s company, has any financial interest or any interest in  
32 the transfer of the property.

33 (c) To offer or deliver any compensation, inducement, or  
34 reward to the owner of the inspected property, the broker, or agent,  
35 for the referral of any business to the inspector or the inspection  
36 company. *Nothing in this section shall prevent a home inspector*  
37 *from naming a seller, a real estate broker, or a real estate*  
38 *salesperson as an additional insured in a liability insurance policy*  
39 *maintained by the home inspector.*

1 (d) Accept an engagement to make an inspection or to prepare  
2 a report in which the employment itself or the fee payable for the  
3 inspection is contingent upon the conclusions in the report,  
4 preestablished findings, or the close of escrow.

5 ~~(e) A home protection company that is affiliated with or that~~  
6 ~~retains the home inspector does not violate this section if it~~  
7 ~~performs repairs pursuant to claims made under the home~~  
8 ~~protection contract. On or after July 1, 2004, to hold oneself out~~  
9 ~~or use the title "certified home inspector" or some other term that~~  
10 ~~infrs that the person is certified to perform a home inspection~~  
11 ~~without meeting the requirements of subdivision (f) of Section~~  
12 ~~7195.~~

13 (f) *To state or advertise a registration or license number unless*  
14 *the license or registration is specified by a statute, regulation, or*  
15 *ordinance.*

16 (g) *To state or advertise that he or she is certified, registered,*  
17 *or licensed by a governmental agency to perform home*  
18 *inspections.*

19 (h) *To fail to disclose or misrepresent any item required to be*  
20 *disclosed in Section 7197.5.*

21 SEC. 4. Section 7197.5 is added to the Business and  
22 Professions Code, to read:

23 7197.5. As soon as it is commercially feasible and prior to  
24 commencing a home inspection, a home inspector shall disclose  
25 in writing to the party on whose behalf the home inspection is  
26 being done, all of the following:

27 (a) The name, address, and telephone number of the home  
28 inspection professional association that certified the home  
29 inspector, and the date the home inspector was certified, unless the  
30 home inspector is not a certified home inspector.

31 (b) A statement disclosing whether the home inspector  
32 maintains professional liability insurance.

33 (c) A statement disclosing whether the home inspector  
34 maintains general business liability insurance.

35 (d) The approximate number of home inspections the home  
36 inspector has performed for a fee.

37 (e) A statement of the home inspector's experience and  
38 education, including the number of years of his or her experience  
39 as a home inspector, and his or her education related to home  
40 inspection.

1 SEC. 5. Section 7197.7 is added to the Business and  
2 Professions Code, to read:

3 7197.7. (a) It is the intent of the Legislature to recognize the  
4 special requirement of mandated insurance for certified home  
5 inspectors in this section in order to protect buyers. This special  
6 insurance mandate recognizes the difference between certified  
7 home inspectors and the other listed categories of experts in  
8 Section 1102.4 of the Civil Code. The other listed experts reflect  
9 occupations that are accomplished by either a degree from an  
10 institute of higher learning such as a four-year college or licensure  
11 by the State of California, neither of which is applicable to  
12 certified home inspectors. Therefore a mandated insurance  
13 requirement applicable to certified home inspectors is necessary  
14 to protect the public.

15 (b) A home inspection report shall be deemed a report by an  
16 “other expert” for purposes of paragraph (1) of subdivision (c) of  
17 Section 1102.4 of the Civil Code if all of the following  
18 requirements are met:

19 (1) The home inspection report deals with matters within the  
20 scope of the certified home inspector’s certification.

21 (2) The home inspection report is prepared by a certified home  
22 inspector who is certified pursuant to this chapter and meets all of  
23 the requirements in subdivision (f) of Section 7195.

24 (3) The report expressly specifies an understanding by the  
25 certified home inspector that the information provided will be used  
26 in fulfilling the requirements of Section 1102.6 of the Civil Code.

27 (4) The certified home inspector’s certification is in good  
28 standing.

29 (5) The certified home inspector has a valid policy of errors and  
30 omissions insurance applicable to the transaction in an amount of  
31 not less than seventy-five thousand dollars (\$75,000).

32 (6) Beginning January 1, 2009, and on every fifth anniversary  
33 thereafter, the minimum face amount of the errors and omissions  
34 insurance specified in this subdivision shall be adjusted for the  
35 following five-year period by multiplying the product of one plus  
36 .01 times the change in the Consumer Price Index for San  
37 Francisco, California, between January 2004, and the Consumer  
38 Price Index for the anniversary year multiplied by seventy-five  
39 thousand dollars (\$75,000).

1 SEC. 6. Section 7198.5 is added to the Business and  
2 Professions Code, to read:

3 7198.5. (a) Nothing in this chapter shall prohibit a licensed  
4 contractor from performing a home inspection.

5 (b) Nothing in this chapter shall be construed to require an  
6 agent or broker to refer a certified home inspector rather than a  
7 noncertified home inspector when making a referral.

